

REMARKS

Claims 1-39 are pending in the application and are presented for a first substantive examination on the merits.

In the outstanding Office Action, claims 1-39 were subjected to a restriction requirement.

By this Response to Restriction Requirement, an election with traverse is made.

RESTRICTION REQUIREMENT SUMMARY

The Examiner has required restriction of claims 1-39 to a single invention under 35 U.S.C. §121 and §372. Claims 1-39 were subjected to a Restriction Requirement as follows:

Group A: claims 1-23, 36, 38, and 39 are allegedly drawn to a support apparatus; and

Group B: claims 24-33 and 37 are allegedly drawn to a support apparatus.

RESPONSE

Applicants provisionally elect to continue prosecution of Group A, claims 1-23, 36, 38, and 39 and respectfully traverse the Examiner's restriction.

The Examiner cites PCT Rule 13.2 to support a claim that the two groups of inventions do not relate to a single inventive concept, in that "they lack the same or corresponding special technical features." The Examiner outlines what are, in the Examiner's opinion, the special technical features of the two groups.

We object to this approach of the Examiner for at least the following reasons. A "special

technical feature” is defined, both in Rule 13.2 of the PCT, as well as in 37 CFR 1.475 (*Unity of invention before the International Searching Authority, the International Preliminary Examining Authority and during the national stage*), as “those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.”

Since the two groups of inventions do share features (e.g., a receiving frame, a support member having a webbing made of flexible material, frame engaging profiles, etc.), an *a posteriori* assessment of unity must be made, i.e., after referring to the prior art. It is therefore irrelevant in the present case to define special technical features without first making specific reference the state of the prior art, for example by identifying the most relevant prior art, which the Examiner has not done.

In addition, the “special technical features” criteria is not appropriate in the present case, wherein the two groups are directed at different categories of claims, i.e., Group A is directed to an apparatus, and Group B to a method of manufacturing an apparatus. As detailed in 37 CFR 1.475(b)(1), as well as in Chapter 10 of the International Search and Preliminary Examination Guidelines (to which the reader’s attention is drawn by MPEP §1893.03(d)), an application which claims a product and “a process specially adapted for the manufacture of said product” are considered to have unity. The MPEP (ad loc.) and Chapter 10 of the International Search and Preliminary Examination Guidelines both point out that “[t]he expression ‘specially adapted’ does not imply that the product could not also be manufactured by a different process.” In other words, even if the product could be manufactured by another process, the application may still be considered to have unity.

As the method of Group 2 is, by this definition, “specially adapted” for manufacturing the

furniture item/support portion of Group 1 (i.e., by following the method of Group 2, a furniture item with a support portion as defined in the claims of Group 1 will necessarily be manufactured), the claims of the application are deemed to exhibit unity, and the Restriction Requirement is thus respectfully traversed.

In addition, it should be noted that the PCT Examiner did not find the claims to be lacking in unity. While we appreciate that the US Examiner is in no way bound by this fact, since the standards used to determine unity are the same in both the PCT application and the present application, the PCT Examiner's conclusions, especially in light of our above arguments, are instructive.

Furthermore, Applicant has paid a filing fee for an examination of all the claims in this application. If the Examiner refuses to examine the claims paid for when filing this application and persists in requiring Applicant to file divisional applications for each of the groups of claims, the Examiner would essentially be forcing the Applicant to pay duplicative fees for the non-elected or withdrawn claims, inasmuch as the original filing fees for the claims (which would be later prosecuted in divisional applications) are not refundable.

In view of the foregoing, Applicant respectfully requests that the Examiner reconsider and withdraw the restriction requirement, and to examine all of the claims pending in this application.

CONCLUSION


In light of the foregoing, Applicant submits that the application is in condition for a first substantive examination. If the Examiner believes the application is not in condition for substantive examination, Applicant respectfully requests that the Examiner contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

Respectfully submitted,

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